The Standing is Slippery

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That's what Bacon said, and then added, 'and the regress is either a downfall, or at least an eclipse.' Although he was speaking of attaining high position in society, the remark is equally a propos of the topic of this paper, the moral status of the foetus, on a certain argument. The argument in question is, not surprisingly, a slippery slope. It was aired and discussed in the literature a number of years ago, but has since suffered 'an eclipse' in both popular and philosophic circles. Some philosophers may think that's because it's seen its 'downfall,' but that remains to be seen.

I

The argument in question goes something like this:

> Birth is a morally insignificant event in the history of the born individual. As far as personhood and entitlement to treatment from the moral point of view are concerned, birth, which for the baby is a mere change of environment, is no more significant than the first birthday. But once birth has been demythologized, as well it should be, we are on the slippery slope. For no particular point between birth and conception is a point at which the person/non-person distinction can be non-arbitrarily located, because the differences in development between any two successive intra-uterine points are so unimpressive. Consequently, we are forced to locate the beginning of human life at the point of conception.[1]

Few philosophers accept the argument, but a common complaint about it, that it's a slippery slope, won't do as it stands. If the above argument is a slippery slope, as it seems to be, and if all slippery slope arguments are fallacious, then it's fallacious and should be rejected. Despite what many logic texts suggest, however, the second premise isn't correct. Some slippery slope arguments aren't fallacious.

[1] Joel Rudinow, 'On "The Slippery Slope",' *Analysis* 34 (1974): 173–6; pp. 173–4.

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Suppose I argue that (a) a man whose total assets amount to a thousand dollars is poor, and that (b) reducing a poor man's assets by a penny wouldn't change him to a non-poor man, and thus conclude that (c) a man whose total assets are nine hundred and ninety-nine dollars and ninety-nine cents is poor. That argument is fine as it stands, and repeatedly applying principle (b) to smaller and smaller dollar-and-cents amounts results in equally sound arguments. A final conclusion to the effect that a man with no assets is poor is certainly well founded. The argument here—call it The Poor Man Argument—is undoubtedly a slippery slope,[2] and is just as undoubtedly cogent.

II

But if the mere fact that the argument of three paragraphs back—call it The Abortion Argument—is a slippery slope isn't sufficient to condemn it, on what grounds might it be rejected? Because it's invalid, Rosalind Hursthouse says. On her reading, the argument is:

1. At some stage, we have something, call it x, with a certain property, call it F. (E.g., we have a newly born baby with the property of having the same moral status as an adult being.)
2. Tracing x back through its development there is no point at which we can find a change in it which justifies our saying that at this point it changed in such a way that it acquired F when it had not had it before. (The premise of the process being gradual.)
3. So it must have had property F right from the beginning.

The problem is that this argument is strictly parallel to the following argument:

1. We have something with a certain a property, namely a patch with the property of being blue (which used to be green).
2. Tracing it back through its gradual changes as it faded in the sun to a slightly less pure green to an increasingly blue one, through a particularly green turquoise and so on to blue, there is no point at which we can find a change in it which justifies our saying that at this point it changed in such a way that it became blue when it had not been before.
3. So it must have been blue right from the beginning.[3]

Since this argument is invalid, The Abortion Argument is as well.

[2] It's what's sometimes called a logical or conceptual slippery slope (as opposed to a causal one).

[3] Rosalind Hursthouse, *Beginning Lives* (Oxford: Basil Blackwell, 1987), pp. 36–7.

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This objection is closely allied with the common complaint that it's illegitimate to insist on a cutoff point, that a cutoff stage is all that's warranted.[4] In fact, in showing that The Abortion Argument is invalid, Hursthouse illustrates as much with an example, an argument in which there's no cutoff point, but only a cutoff stage, with the stage itself being somewhat indefinite. It's also related to the position that a number of philosophers have argued for, that the cutoff point is some point or other during gestation, but lord only knows where it is—in other words, the entire period of foetal development is the grey area, the area in which we don't know whether the foetus is or is not a human being.

The conclusions that Hursthouse draws from her demonstration of the invalidity of arguments she considers are that (1) The Abortion Argument fails, but that (2) the argument does prove something: 'we should infer that the property [in question] (being blue, having a certain moral status) is a matter of degree.'[5] A possible rejoinder to her second conclusion, she admits, a rejoinder that would also, and more importantly, tell against her first conclusion, is that 'moral status is quite unlike the property of being blue and does not admit of degree.'[6] This, however, won't do as a reply, for it entails

> quite extreme views about animals.... Either animals have the same moral status as babies and adult human beings or ... they have no moral status at all and ... the wanton killing of any animal is morally insignificant. [In addition, it entails that the moral standing of a chimpanzee is equal to that of a duck, but] faced with a choice between saving the life of a chimpanzee and the life of a duck, [shouldn't I] choose to save the chimpanzee?[7]

In addition, if a chimpanzee has the same moral status as a child, the view in question entails that it's a matter of moral indifference which of the two is saved, if only one can be. These are all strongly counterintuitive implications of the attempt to defend the original Abortion Argument against a charge of invalidity by claiming that moral status is a categorical rather than a degree concept.

[4] In 'Justifying "Wholesale Slaughter",' *Canadian Journal of Philosophy* 5 no. 2 (1975); reprinted in Joel Feinberg, ed., *The Problems of Abortion,* 2nd ed. (Belmont, Ca: Wadsworth Publishing Company, 1984), pp. 65–70, Donald Van de Veer very explicitly makes this claim.

[5] Hursthouse, op. cit., p. 37.

[6] Ibid., p. 38.

[7] Ibid.

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III

There are two parts to Hursthouse's critique of The Abortion Argument, then. First, there's a demonstration of the argument's invalidity; second, there are objections raised to the attempt to defend the argument against that charge by claiming that moral status isn't a matter of degree. I'm not convinced by either.

To take the second issue here first: even if the argument that Hursthouse presents is invalid, the rejoinder that the proponent of The Abortion Argument would make wouldn't be that moral status isn't a matter of degree—he should agree with her on that—but that the right to life isn't, and that that's what he's concerned with. In other words, he would frame The Abortion Argument in terms of the right to life from the start. Our normal understanding of that concept is that it's a categorical concept, not a degree one, even if our normal understanding of the concept of moral status (or moral standing) is that it's a degree concept. Couching the argument in terms of a categorical concept avoids the problems alleged, because infants and foetuses could then be claimed to have a right to life, based on The Abortion Argument, while animals, on other grounds—sentience, at least, among them—said to have moral standing of a lesser and variable degree, with the exact nature and extent of their moral standing depending on how, how fully, or to what degree they satisfy the criteria of moral standing. This is a coherent position that (1) jibes with our intuitions about the nature of the concepts of a right to life ('it's a categorical concept') and moral standing ('it's a degree concept'), (2) accords, because of The Abortion Argument, much higher moral standing—possession of a right to life—to the infant and foetus than to an animal (The Abortion Argument doesn't apply to animals), while allowing, for other reasons, animals to have some and variable moral status, and thus (3) avoids the untoward implications pointed out by Hursthouse.[8]

What of Hursthouse's first charge, that The Abortion Argument is invalid? The argument doesn't instantiate a valid argument form, not as she's set it up, and so is formally invalid. It could still be valid even so, though. Not all deductive validity is formal validity, a point attested to by Hursthouse's admission that the argument is salvageable, that there's an answer to the charge of invalidity, if the concept

[8] Hursthouse brings up the concept of a right to life in this context, and yet, after mentioning it, ignores it and proceeds to discuss The Abortion Argument solely in terms of moral status. I'm not sure why she does this.

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that figures in it is a categorical one. The point is reinforced by the fact that other conceptual slippery slope arguments, for example The Poor Man Argument, are valid. Since conceptual slippery slope arguments all have the same form, the validity of The Poor Man argument shows that an argument can be valid without being (supposedly) formally valid (since it shares the same form as The Abortion Argument). The charge of invalidity, then, can't be made to stick merely on the basis of a determination of formal invalidity.

But is The Abortion Argument really invalid at all, even formally? I don't think so, because I don't think that slippery slope in general, and The Abortion Argument in particular, has the form that Hursthouse attributes to it. The Abortion Argument is a conceptual slippery slope argument, and as Max Black says:

> we may as well begin our examination of the *sorites* argument [essentially, the conceptual slippery slope argument] by conceding its *validity*. For the pattern of reasoning is the familiar and unimpeachable one known as 'mathematical induction.' *If* every man having a certain height is short, and *if* the height of a short man can always be increased by a tenth of an inch without his ceasing to be short (and *if* a man shorter than a short man is short)—if all that is true, every man *must* be short. Now when we have a valid argument with a false conclusion, we know that at least one of its premises must be rejected.[9]

As Black says, a *sorites*, including The Abortion Argument, is basically a kind of mathematical induction, just as The Poor Man Argument is, and so valid, even formally valid.[10] The Abortion Argument has a base premise to the effect that a two-year-old child is a human being, and an inductive premise to the effect that subtracting the small changes that occur in a developing child over the period of a day (or an hour or a minute) doesn't change him or her from being a human being to not being one. The conclusion, that a

[9] Max Black, 'Reasoning with Loose Concepts,' reprinted in his *Margins of Precision* (Ithaca, NY: Cornell University Press, 1970), p. 4.

[10] In saying this, and in saying what I do earlier in relation to the Poor Man Argument, I'm taking a position on the nature of conceptual slippery slope arguments which, though common, has been disputed. Space considerations don't permit a defence of it here, so in this context I can rely only on the intuitive appeal of the following argument: (1) slippery slope arguments are structurally similar to mathematical inductions, (2) because (1) is true, such arguments are valid, and (3) since the individual premises of some slippery slope arguments are highly plausible, such arguments are cogent. The premise would probably draw the most fire here is the second.

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foetus is a human being from the moment of conception, necessarily follows. The only way to stop the slide, as Black in effect says, is to find fault with the inductive premise. Charges of invalidity, then, and even formal invalidity, are misplaced.

IV

Rejecting The Abortion Argument, then, requires rejecting the inductive premise. This means that someone who thinks the argument fails is committed to there being a point during gestation prior to which the foetus isn't a human being and after which it is. Contrary to what Hursthouse is suggesting, then, but as the proponent of the argument insists, there's a cutoff point, not just a cutoff stage.

Two important points need to be made about the fact that there's a cutoff point. First, the cutoff point isn't necessarily 'out there,' waiting to be discovered (assuming our cognitive powers are up to it). It might be, but it might be something to be decided rather than discovered. If the cutoff point is to be decided, it can't be decided arbitrarily, of course, and there are better and worse reasons for opting for any proposed cutoff point, and better and worse reasons for rejecting any proposed point. The same is true, however, if the cutoff point is a matter of discovery.

Second, the existence of a cutoff point is distinct from having to say where that cutoff point is. Perhaps those who reject The Abortion Argument don't have to say precisely where it is and need only indicate the approximate boundaries of a cutoff stage. (Perhaps they take the Epistemic View on vagueness, and claim that our cognitive faculties aren't up to the task of determining where the cutoff point is.)[11] For all that's been said so far, that might be the case. They do have to admit, though, that there is a cutoff point.

V

This second point needs to be pursued further, however. Do critics of the argument have to say where the cutoff point is? A proponent

[11] Two excellent books on vagueness are Timothy Williamson, *Vagueness* (London: Routledge, 1994), and Rosanna Keefe and Peter Smith, eds., *Vagueness: A Reader* (Cambridge, MA: MIT Press, 1996). The Epistemic View, and other competing views on vagueness, are clearly explained and discussed in both.

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thinks they do, and presses the point. A critic typically thinks not. But the proponent is more in the right here than the critic.

That's because the logic of the situation is this. The critic claims that The Abortion Argument doesn't work. Saying as much, he has to reject the inductive premise. On what grounds does he reject it? Either on the grounds that (1) he knows where the cutoff point is, and it's not conception, or on the grounds that (2) although he doesn't know where the cutoff point is, he knows that it's not conception. In either case the slide stops before conception.

Alternative (1) isn't promising. Critics of The Abortion Argument typically don't specify a cutoff point, and when they do, strong objections to it, be it quickening, viability, birth, social visibility, or whatever, are soon forthcoming.[12]

There is one cutoff point, however, that some have argued does have a lot to say for it and little to be said against it.[13] The point occurs about two weeks into gestation, and the argument for it goes something like this. Wrongdoing in general is predicated upon the existence of an individual that's wronged. No individual, no possibility of wrongdoing. The slide to conception can be stopped, then, if there's a point at which no individual human being can be identified. And there is such a point. Before the appearance of the 'primitive streak,' about 14 days after conception, a developing zygote may split into two—twinning may occur—or two developing zygotes may merge into one—a chimera may form. If the former, the question to be asked is, Which of the twins is identical with the individual that existed before twinning? No positive answer seems satisfactory: 'Both are' is incoherent, since two can't equal one; and 'This one is,' said of either of the two, is entirely arbitrary. The only reasonable answer is 'Neither is.' *Mutatis mutandis*, much the same holds in the case of a chimera. A chimera can't be identical with

[12] And any arguments advanced in its favour strongly criticized.

[13] Norman M. Ford's *When Did I Begin*? (Cambridge: Cambridge University Press, 1988) is a book-length argument for the claim that 'the human individual begins with the appearance of the primitive streak' (p. 182). Mary Warnock, in her Foreward to the book, concurs (pp. ix–x). Philip Devine, in *The Ethics of Homicide* (Ithaca, NY: Cornell University Press, 1978) appears to agree as well (pp. 82–84). Arguing as much doesn't commit them to the further claim that abortion before the appearance of the primitive streak is a matter of moral indifference, although others would want to take this further step, and I have incorporated it in the presentation of the argument that follows. Elizabeth Anscombe is also well aware of the case for the primitive streak but, like me, rejects it. See her 'Was I a Zygote?', in A. Phillips Griffiths, ed., *Philosophy and Practice* (Cambridge: Cambridge University Press, 1985).

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both of the pre-existing zygotes, and identifying it with either one or the other is entirely arbitrary.[14] The answer must once again be that it's identical with neither. But as the concept of an individual is caught up with that of identity, and as identity, for the reasons just mentioned, can't be established prior to the existence of the primitive streak, no individual exists prior to that point in gestation. The slide stops at two weeks, then. That being the case, abortion, experimentation, and even the deliberate destruction and use of zygotes for medical purposes are all morally permissible up to that point.

While there may be more to said for the cutoff point in question than for any of the usual suspects, the argument here is less than convincing. The least important point to be made about it is that as far as abortion is concerned, its practical significance is much less than what's usually desired, even if the argument is fully successful. With the technology currently available, pregnancy isn't detectable until after two weeks into gestation. Thus the only forms of abortion underwritten by the argument are those due to the IUD, the 'morning after pill,' and the 'abortion pill' (RU-486).[15] All other abortions, which means the vast majority of abortions, receive no solace from the argument.

But does the argument establish its conclusion at all? One premise that might be questioned is that all wrongdoing is the wronging of an individual. It's at least arguable, and some philosophers have argued, that a person can do wrong without wronging anybody or even any thing, any individual. An unorthodox Kantian might say as much about a person who doesn't develop his talents,[16] an environmentalist about someone who trashes the environment, an animal liberationist about an individual or society that allows a species

[14] Assuming, as is not the case, that a chimera is the result of a merger that's the mirror image of twinning. As I understand it, such mergers actually more closely resemble assimilations of one zygote by the other than reverse twinnings.

[15] Some people have claimed that the 'morning after pill,' and perhaps the IUD, aren't forms of abortion. If (a) pregnancy is defined in terms of implantation, (b) abortion is defined in terms of the termination of pregnancy, and (c) the 'morning after pill' and/or the IUD prevent implantation, then (d) they aren't form of abortion. I'm not at all sure that (a) is correct, but even if it is, the issue is largely a semantic one. On the assumption that the zygote is a human being, the deliberate prevention of its implantation, with death as the result, is morally but little different from the abortion of an implanted zygote, with death as the result.

[16] I say an unorthodox Kantian, because Kant himself would presumably hold that such an individual wrongs himself, because he violates a duty to himself.

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to die off, or a natural law theorist about a couple that deliberately fails to reproduce—consider, for example, the last couple on Earth, after a nuclear catastrophe. Even if the zygote isn't an individual, it could thus still be wrong to destroy it. In fact, given that, on the argument, the early zygote will very soon become a human being if allowed to develop naturally—or maybe split and develop into two human beings, or merge with another zygote to form one human being—its destruction would be a prime candidate for wrongdoing without an individual's being wronged.

But the argument's main problem lies in the attempt to establish that before the appearance of the primitive streak the zygote isn't a human being at all. Even granting that neither of two twin zygotes can be identified with a pre-twinned zygote, the conclusion that the pre-twinned zygote isn't a human being doesn't follow. If adult human beings were, with relative infrequency, to divide like amoeba at age 35, and neither of the resultant clones—for they would be clones, spontaneous clones—could be identified with any individual that existed prior to such a division, that wouldn't mean that there were no individuals, no human beings, from which the clones came. In each case, there would be one, the 'parent' human being. And it certainly wouldn't mean that before the age of 35, there are no human beings at all, which is what the conclusion of the argument of three paragraphs back really amounts to. For even if, *arguendo*, in cases of 35-year-olds splitting into two there's no prior human being from which they came, why should that affect cases in which splitting doesn't occur? Would the fission of a 35-year-old a hundred years from now mean that none of us today are human beings before that tender age? The logic of the matter is basically the same for virtually all the cases of fission and fusion that so fascinate philosophers, including those that don't involve people. If a star were to divide in two, with the resultant stars soon attaining the size of their parent, there would be a star, an individual star, from which they came. Evidentally, the argument for the primitive streak conflates concerns respecting the continued identity of an individual over time with concerns respecting identity as such. The latter notion is caught up with the idea of an individual, be it a human being or a desk, but problems respecting the determination of continued identity over time presuppose that an individual is present in the first place, but that tracking him (or her or it) is problematic for some reason. It's because of that presupposition, in fact, that properly gauging the argument for the primitive streak actually reinforces the conclusion of The Abortion Argument: an individual human being is present, but problems

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respecting re-identifying him or her arise in cases of fusion and fission.

To this, two objections might be raised. The first is that to allow for the splitting or merging of people at all is to invite 'chaos of thought and passion, all confused.' The disintegration of our concept of a person, in other words, and thus of related concepts, would result from countenancing splits or mergers. Thus the practice must be banned; and the slide stops.

There are two problems with this argument, though. The minor one is that the claim that to permit even a small number of splits or mergers would be to embrace 'all ruinous disorders' is extravagant. A splitting or merging 35-year-old or two could inhabit our world without such disastrous conceptual consequences, for an ad hoc handling of such cases is desirable to either scrapping large numbers of concepts or declaring what seems readily imaginable as impossible. As instances of the practice of splitting or merging became more and more common, greater and greater troubles of a conceptual sort would no doubt arise, and at some point we could slide into utter chaos. But by itself, that doesn't necessitate a complete prohibition on splitting or merging.

More importantly, the reason that widespread splitting or merging would eventually create such chaos is that with relatively developed human beings, a great many significant conceptual ties are firmly in place. By age 35, each person has a unique history and personality, unique character traits, personal experiences, personal relations, life prospects, personal responsibilities, and so on. A unique place in the world and a unique personal identity are forged by an individual over time, and our concept of a person or human being reflects as much. Severing or radically re-adjusting such connections might be possible if only a small number of relatively developed individuals split or merged, but not if splitting or merging became the order of the day. But the qualification here is important: relatively developed. A human being at the very earliest stage of development hasn't led a rich human life, and is far less conceptually connected to other important concepts that anchor our full notion of a person, notions like *trustworthy*, *guilt*, *friend*, *failed poet*, *business oriented*, *European traveller*, *student*, and so on.[17] Allowing for the possibility of splitting or merging during the first fifteen days of human development is thus much less conceptually traumatic than at a later stage, and much easier to tolerate, even if

[17] And actually, much more particular notions than these in each case, such as *enemy of Walt Weber*.

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such splits or mergers were in fact much more common than they are.

The second objection takes an altogether different tack. In the case of an adult human being splitting, it might be argued, it's non-controversial that there's a human being present before fission occurs, whereas in the case of a zygote, the very question at issue is whether a human being is present before the appearance of the primitive streak, that is, before fission is no longer a possibility. To take the cases to be analogous is to beg the question at issue.

The proper response to this argument is that such a reply effectively gives up on the original argument for the primitive streak. Something is present before the primitive streak appears—a human zygote, both parties agree—and, split or no, what's present after that point is a human being or two—again, both parties agree. Since the inference from 'This could possibly split into two Xs after time t' to 'This isn't an X before time t' has been shown—and admitted—to be incorrect, the only question that remains is whether the pre-primitive streak zygote is similar enough to the post-primitive streak zygote to merit the title of human being. The possibility of twinning or merging has dropped out of the argumentative picture. And since the pre-primitive streak zygote shares a large number of significant traits with the post-primitive streak zygote (or zygotes), as well as being spatio-temporally continuous with it (or them), the most rational conclusion to draw is that this something, this human zygote, is also a human being. The analogy with the splitting 35-year-old thus isn't misplaced, for it's not a miniscule pot, for example, or a tiny clump of dust that suddenly transforms into a human being when the primitive streak appears, but a being extraordinarily similar to what on both sides of the argument is admitted to be a human being.

VI

So much for alternative (1). If alternative (2) is opted for, if the critic of The Abortion Argument claims that although he doesn't know where the cutoff point is, he knows it's not conception, the question that immediately arises is what his grounds for rejecting conception are. This is a relevant and important question. There are a number of possible responses to it: (a) it's a self-evident, necessary, or conceptual truth that conception isn't the cutoff point; (b) it can be deductively demonstrated that conception isn't the cutoff point; (c) there's a good argument, even if not a deductive one, for

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the view that conception isn't the cutoff point; (d) taking conception as the cutoff point doesn't mesh well with, or is inconsistent with, other strongly held and well grounded beliefs; (e) conception's being the cutoff point is counterintuitive, and perhaps clearly and strongly so. As far as I can tell, no matter what a conceptual slippery slope argument may concern, be it heaps, bald men, or the foetus, if a critic says that it's unsound and also admits that he doesn't know where the cutoff point in question is, he has to provide an answer to the question, 'But why doesn't the slide go all the way to the end?', and his answer has to be of an (a)-(e) sort. The point is one of cognitive or epistemic responsibility: a person can't reject an argument just because he doesn't like the conclusion. He has to have some epistemically respectable reason for doing so.

Consider a typical unsound *sorites*, The Rich Man Argument. A man with total assets of ten million dollars is rich; subtracting a penny from a rich man's assets won't change him from being a rich man to not being a rich man; therefore, a man with no assets at all—assets of zero dollars and zero cents—is rich. We know that the inductive premise is false, and thus that the argument is unsound, *because* we know that the conclusion is false, even if we can't specify precisely where the cutoff point between being rich and not being rich is. That means that we have to have some reason for thinking the conclusion false *in order to* condemn the argument. Otherwise, we'd be rejecting the argument just because we don't like the conclusion. In this case, there are good reasons for thinking the conclusion false: it's a conceptual falsehood (an (a)-type reason), or at least clearly and strongly counterintuitive (an (e)-type reason), that a person with no assets is rich. In the case of The Poor Man Argument there's no reason of any kind for thinking the conclusion false, and the argument goes through. That's true even though, once again, we can't specify an exact dollar-and-cent amount that divides being poor from not being poor.

VII

What sort of reason does the critic appeal to in relation to The Abortion Argument? The claim that the foetus is a human being from the moment of conception isn't self-contradictory or a conceptual falsehood, and, as far as I can tell, its falsity can't be demonstrated deductively. (a)-type and (b)-type reasons aren't available, then.

The common argument that the zygote is no more a human being

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than an acorn is an oak tree[18] is a (c)-type reason, but it fails because of a faulty analogy: an acorn is comparable to an unfertilized egg cell, not a zygote; and a sprouting acorn is a sprouting oak tree. The related (c)-type argument that the zygote is no more a human being than a caterpillar is a butterfly[19] is slightly different, but suffers the same fate. Granted, a caterpillar isn't a butterfly, and a baby or zygote isn't a teenager. All that says, though, is that a being at one developmental stage isn't a being at another developmental stage. That's analytically true, but in and of itself, no reason to think that one and the same being—one and the same *ugly-squiggly commonus* (my Latin is a little weak) or one and the same *homo sapiens*—isn't a caterpillar or a baby/zygote at one time and a butterfly or a teenager at another. More importantly, it's no reason to think that a caterpillar isn't a *ugly-squiggly commonus* or that a baby or zygote isn't a *homo sapiens*. Other (c)-type reasons might also be offered, of course, but none that I know of is convincing.

A (d)-type response might be tried, but the claim would have to be that conception's being the cutoff point doesn't mesh well with our other well-founded beliefs, not that it's inconsistent with them; it certainly is consistent with them. Even the somewhat indefinite charge that it doesn't integrate well with our other beliefs is dubious. Epistemically speaking, the belief that the foetus is a human being from the moment of conception fits in well enough with our other beliefs, and generates no very significant cognitive cramps—which, again, isn't to say that it's an especially convenient belief to have, as far as self-interest is concerned. It was, in fact, the belief of almost everyone not so very long ago, and little complaint of an epistemic sort was heard. This isn't to say that many people today currently like the view, or prefer it—the great majority of philosophers, at least, don't like it at all—but it is to say that it doesn't wreak epistemic havoc or even create so much epistemic disturbance that it should obviously walk the plank.

The most promising response is an (e)-type one: the foetus's being a human being is clearly and strongly counterintuitive. That's

[18] See, for example, Judith Jarvis Thomson, 'A Defense of Abortion,' *Philosophy and Public Affairs* 1 no. 1 (1971): 47–8; Marvin Kohl, *The Morality of Killing, Sanctity of Life, and Euthanasia* (New York: Humanities Press, 1974), p. 42; Roger Wertheimer, 'Understanding the Abortion Argument, *Philosophy and Public Affairs* 1 no. 1 (1971): 74, 82; David Lamb, *Down the Slippery Slope* (London: Croom Helm, 1988), p. 116.

[19] Lawrence C. Becker, 'Human Being: the Boundaries of the Concept,' *Philosophy and Public Affairs* 4 (1975), esp. pp. 337–45.

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too strong a charge as it stands—it's surely not *clearly* and *strongly* counterintuitive, for people offering the argument aren't making claims on the order of 'the blackboard [in front of the room] is round' when there's a clear, strong, and widely shared intuition that it isn't round at all, but rectangular. The most that could be claimed is that it's counterintuitive to some extent to think that the foetus is a human being from the moment of conception. As the ability of the critic to overturn The Abortion Argument is a function of the strength of his objection to its conclusion, and as that comes down to how strongly counterintuitive that conclusion is, a judgment that it's somewhat or weakly counterintuitive would mean a weaker reason for rejecting the argument. In fact, since the conclusion has an argument backing it up, if it's only mildly counterintuitive, it might well be more rational to throw the judgment of counterintuitiveness overboard than to jettison the proposition that the foetus is a human being from the moment of conception.

But I think that even the weaker claim, that the proposition in question is counterintuitive to some extent, is false. Relevant here to a very minor extent are the facts that few people in the past considered it false and that many—by the polls, the majority—don't consider it so today. If it really is counterintuitive, those facts will have to be accounted for in a plausible way that preserves the proposition's counterintuitiveness. Much more important is that even if people did or do consider it false, they don't do so because they take it to be counterintuitive. Independent of reflective thought on the proposition, there's no immediate and at least middlingly strong judgment to the effect that it's wrong. Certainly, (i) people can become convinced, and even strongly convinced, that it's false, and then (ii) come to have strong feelings about it. Neither fact is relevant to the issue at hand, however. The first isn't because it's not an intuition in the sense needed here, but an inculcated belief that has become deeply internalized. It is, moreover, just the sort of belief that stands in need of defence; we need to know what its epistemic credentials are. And the second isn't because intuitions are judgments, not feelings. What's needed is an untainted cognitive response to the proposition 'the foetus is a human being from the moment of conception,' the kind of response we expect from an intelligent and sensible person not already partisan on the issue. I doubt that under those conditions the proposition in question would elicit or has elicited widespread and at least middlingly strong immediate, pre-reflective rejection. This isn't to say that we have a strong intuition that the foetus is a human being from the moment of conception—I'm not arguing for that, though I do think

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that the proposition in question has some intuitive appeal. And it isn't even to endorse heavy trafficking in intuitions in moral philosophy, though I do think that intuitions have a place, and an important one, in ethics. I'm simply following the trail of argument that the critic of The Abortion Argument has to travel. All that's being argued is that the claim that

> 'The foetus is a human being from the moment of conception' is counterintuitive

isn't well founded, and is in fact highly suspect.

VIII

A couple of more points need to be made about The Abortion Argument.

First, although I've been mainly concentrating on a version of the argument that focuses on the foetus's being a human being, the argument can be couched in terms of at least five different concepts, resulting in five different arguments with five different conclusions:

(1) the foetus is a human being from the moment of conception;
(2) human life begins at conception;
(3) the foetus is a person from the moment of conception;
(4) the foetus has (some) moral standing from the moment of conception;
(5) the foetus has a right to life from the moment of conception.

(2) might or might not be distinguished from (1). If it's possible to be a form of human life without being a human being—basically, to be a live organism that isn't a member of our species (or any other) but nonetheless human—then (2) does differ from (1). Perhaps the conceptus is just that, human life that isn't a human being, that is, a living being or organism that's human but not a bona fide member of our species. If this distinction is sound, though, a defence of (1) is *a fortiori* a defence of (2), since all human beings are instances of human life, even if not all instances of human life are human beings. So distinguished, (2) would need little defence anyway, since presumably everyone would agree that the conceptus is a form of human life. After all, according to the view in question, it's the paradigmatic example of a human life that isn't a human being.

(1) is bolstered by the fact that biologists classify organisms as members of this or that species, including the human species, from the moment of conception. If, however, the person/human being

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distinction is made in such a way that the concepts are independent of each other, with *person* being a wholly psychological concept requiring conceptual functioning of a high order, and *human being* a wholly biological concept, a defence of (1) isn't *ipso facto* a defense of (3). Perhaps, with that distinction in place, there's a justifiable cutoff point other than conception for personhood; or perhaps there's a reason of the (a)–(e) sort for thinking that (3) is wrong, even if the exact cutoff point for personhood is unknown. Tristram Engelhardt, Mary Ann Warren, Michael Tooley, Joel Feinberg, Stanley Benn, and others who make the person/human being distinction more or less in the way sketched above, think so. They argue that the foetus isn't a person at the moment of conception—or, in fact, even at birth—and give (a)-, (b)-, or (c)-type reasons for thinking as much. Certainly both their distinction and their arguments have a great deal to say for them.

Still, the reply would be that conceptual distinctions are one thing, and real distinctions—distinctions grounded in the nature of the world, in metaphysics and deeply rooted empirical realities—quite another. Although the foetus might not satisfy certain high-level psychological criteria, and so isn't a person if concepts are all that's in question or all that needs to be taken into account, the problem is that the antecedent here is false. More needs to be taken into account because the reality of personhood, as it manifests itself in the real world, is what needs to be determined. In a word, the soul isn't as easily separated from the body as the conceptual independence of *person* and *human being* may lead us to believe. The metaphysical and empirical reality of personhood is inextricably bound up with humanity, and that, it's argued, essentially makes them correlative concepts—conceptual Siamese twins, as it were—as far as metaphysics is concerned. Aristotle, Aquinas, Leibniz, Kant, possibly Hegel, and even, in their two very distinctive and different ways, Descartes and Wittgenstein held views of this sort, and would have rejected the attempt to determine the personhood, or even the humanity, of a being on the basis of no more than the quick application of conceptual criteria. This isn't to say that all of the above mentioned philosophers would have regarded the foetus as a person from the moment of conception (although most did or would), but it is to say that the position lends itself to the view that from the moment of conception, foetuses should be regarded as persons in a deep metaphysical sense, because of non-conceptual but real and ontologically significant relations between humanity and personhood. Otherwise odd pronouncements on the order of 'All potential persons (conceptual sense) are persons (metaphysical sense)' and

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'Necessarily, all humans are persons (metaphysical sense)' may be implied by this view, but the very fact that we can make sense of such remarks attests to our implicit understanding of the metaphysics behind them. On this view, then, there's little to no distinction worth making between humans and persons, and an argument that the foetus is a human being from the moment of conception carries with it, runs in tandem with, or is at one small remove from the argument that the foetus is a person from the moment of conception.

IX

On one interpretation, a slippery slope argument that focuses on (4) may be acceptable to all sides on the abortion debate, because (4) doesn't specify what the moral standing of the conceptus is, only that it has some moral standing. Liberals could agree and maintain that the foetus, at conception and for some time thereafter, has minimal moral standing—so little that a woman's desire for an abortion, whatever its basis, ensures its moral acceptability. The conservative reply would be that what the slippery slope argument shows is that the conceptus has the same moral standing as a two-year-old, and that that's hardly minimal. Again, if that's not so, the proponent of The Abortion Argument would say, the critic has to specify when and why a change, a downgrading of moral standing, occurs, or at least why such a downgrading proceeds at the rate it does, ending in virtually no moral standing at conception. It's not sufficient to gesture in the direction of gradual biological changes, as Hursthouse and others are tempted to, and then declare that since biological development is gradual, so is the development of moral standing. The argument for such a claim is lacking. The Abortion Argument bases moral standing on humanity, not on an organ or tissue count, and denies that humanity vanishes or diminishes as the foetus is tracked back earlier and earlier in its development. If that's not so, something more than the fact that a third trimester foetus looks more like us and has more and bigger anatomical structures than a conceptus does has to be brought to bear. Humanity, the Abortion Argument reminds us, doesn't come in degrees, even if moral standing does.

Note, incidentally, that the problems Hursthouse brings up in relation to the view that the foetus has moral standing don't arise here, since they, the problems, depend on taking moral standing to be a categorical concept. It could be denied to be such, and the

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conceptus still said to have the moral standing of a two-year-old or an adult, without generating the problems she mentions. Still, there's something unsatisfying about this position, since what exactly it means to have the moral standing of a two-year-old, what that status amounts to, is left unstated and indeterminate. Clarification, at least, is needed.

Clarification can come in the form of (5), though it needn't. An argument for (5), however, comports well with an argument for (1) or (3); essentially, the three have the same roots, and intertwined conclusions, a fact attested to by proponents and critics alike, in frequently failing to distinguish the three, and mixing concepts from all three together in their arguments or criticism. On all but extreme liberal views, two-year-olds have a right to life, and thus, on the argument, the foetus does as well, at every point during gestation. Since the moral status of being the possessor of that right is about as clear and important as any moral status is, (5) is a very powerful conclusion.

Too powerful for many people. Objections from proponents of the person/human distinction would centre around that distinction plus the claim that only persons have a right to life. Given some empirically well-founded premises about the psychological abilities of the foetus and young infant, what follows is that even neonates don't have a right to life. The conclusion of The Abortion Argument is thus wrong, and the argument defective, even if we don't know where the dividing line between persons and non-persons is.

Part of the response to this counterargument has already been rehearsed above, in relation to (3), but even if a conceptual person/human distinction of the sort the critic urges is accepted, the argument still has its problems. One is that it simply steamrolls our relatively strong and settled intuition that young infants have a right to life. That aside, absent ad hoc adjustments, the argument also has other counterintuitive implications concerning stroke victims, the senile, the severely retarded, the grossly developmentally impaired, the brain damaged, and the comatose. Perhaps such individuals are better off dead—many philosophers today seem to think that's obvious—but even so, that's not the question. The question is whether they have a right to life, and I take it they do. Connected with this is that, at least as far as I've been able to tell, there's no good argument for the claim that only persons have a right to life.[20]

[20] See Philip Devine, op. cit., Hursthouse, op. cit., or my own 'What Ever Happened to Baby Jane?', *Nous* 23 no. 5 (1989): 690–6 (abridged version published as book review), and 'Abortion: The Extreme Liberal Position,' *The Journal of Medicine and Philosophy* 12 (1987): 241–65.

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X

If what I've been arguing here is correct, The Abortion Argument fares pretty well. The argument is clear and valid; it has a base premise that's true; objections to the argument are less than convincing; there's no alternative cutoff point (a cutoff point other than conception) that either has a lot to say for it or isn't saddled with serious problems of its own; and attempts to overthrow the argument's conclusion directly, by arguing against it, claiming counterintuitiveness, demonstrating inconsistency with other well-warranted beliefs, and so on, all fail. Provisionally, the argument should be accepted, even if its conclusion isn't a very agreeable one to many people, especially in today's climate of opinion.

Having said as much, I have to add that for at least three reasons, caution should be exercised. First, The Abortion Argument isn't clearly a sound argument, as The Poor Man Argument is, nor is it clearly an unsound argument, as The Rich Man Argument is. It's a slippery slope argument that survives critical scrutiny, that we judge sound not immediately but only after vetting. That means that we should be particularly vigilant to keep an open mind in the future. Problems are more likely to crop up in the case of such an argument than they are in the case of a clearly sound slippery slope argument.

Second, a related point. The Abortion Argument is also, in effect, an argumentum ad ignorantiam, and as such is more liable to overthrow than many other arguments. I say this because basically what the argument says is that a two-year-old is a human being/person/etc., and we have no good reason to think otherwise in relation to him or her at any earlier stage of development. This claim of there being 'no good reason to think otherwise' seems particularly vulnerable to attack.

Third, a point related to the second one. The Abortion Argument offers an indirect argument for its conclusion, one that simply piggybacks on the claim that a given being, a two-year-old, is a human being/a person/etc. The fundamental grounds for, say, possession of a right to life are not mentioned, much less explored, in the argument. What this means is that it's a secondary, indirect argument, one that attempts to carry the day without itself tackling any of the weightier issues, both metaphysical and moral, that surround humanity, personhood, moral status, and the right to life. It could be that such an argument is the best that can be done as far as the issue of foetal status and the morality of abortion is concerned, but even so, we can hope for more, and try to find more. I, at least,

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would feel more confident if there were other, independent, and more fundamental arguments that also lead to the same conclusion.[21, 22, 23]

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[21] Devine, op. cit., and others, such as myself, in 'In Defense of Speciesism,' *Ethics and Animals* 5 no. 3 (1984): 47–60; and 'The Power of Potentiality,' *Theoria* 52 nos. 1 &2 (1986): 16–40, have tried to provide such arguments.

[22] However, both conservatives—meaning those who think that the conclusion of The Abortion Argument is correct—and non-conservatives should be more interested in The Abortion Argument than they have been. This is because conservatives are, every one of them, committed to its premises and inference, and non-conservatives are, every one of them, committed to rejecting one or both of its premises or its inference. The same holds for non-conservatives in relation to every argument for the conservative position, but there's no other argument that every conservative has to hold to. It's imperative, then, for all conservatives to defend it, and thus equally imperative for all non-conservatives to find fault with it.

[23] My thanks to Anthony O'Hear for a number of useful comments on an earlier draft of this paper. Special thanks, however, must go to Walter L. Weber for his dogged criticism.

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